IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

OP.No. 6255 of 2001(T)

PETITIONER:

C. KRISHNAN ACHARI,
DEPUTY MANAGER (EIN),
SILK, ATHANI.P.O.,
THRISSUR.

BY ADV. SRI.S.CHANDRASENAN,
ADV. SRI.P.K.SOMARAJAN,
ADV. SRI.S.SAJITH.

RESPONDENTS:
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1. **THE CHAIRMAN AND MANAGING DIRECTOR (HRD),**
STEEL INDUSTRIALS KERALA LTD.,
SILK NAGAR, ATHANI.P.O.,
THRISSUR.

2. **THE MANAGINGDIRECTOR,**
SCOOTERS KERALA LTD.,
VADACKAL.P.O., ALLEPPEY.

BY ADV. SRI.C.C.THOMAS

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 18/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NOS. 10325/2001 & 24812/2002 IN O.P. NO. 6255/2001

DISMISSED

18/09/2007. **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE LAST PAY CERTIFICATE ISSUED BY THE R.2.

EXT.P.2: COPY OF THE RCOVERY STATEMENT ISSUED BY THE R.2.

EXT.P.3: COPY OF THE NOTE WITH THE STATEMENT ISSUED BY THE R.2.

EXT.P.4: COPY OF THE TERMS AND CONDITIONS FROM SILK.

EXT.P.5: COPY OF THE REMITTANCE LETTER DTD. 03/02/98 ENCLOSING THE D.D. FOR RS.44,990.65.

EXT.P.6: COPY OF THE LETTER SENT BY THE PETITIONER DTD. 11/12/99.

EXT.P.7: COPY OF THE LETTER DTD. 28/12/99.

EXT.P.8: COPY OF THE LETTER SENT BY R.2. TO THE PETITIONER DT. 29/01/2001.

EXT.P.9: COPY OF THE LETTER SENT BY R.2. TO THE R.1. DT. 02/02/2001.

EXT.P.10: COPY OF THE INTER OFFICE NOTE ISSUED BY THE R.2. DT. 08/02/2001.

EXT.P.11: COPY OF THE LETTER DT. 05/04/2002 2ND RESPONDENT SEND TO THE IST RESPONDENT.

EXT.P.12: COPY OF THE LETTER DTD. 18/03/96 ISSUED BY THE R.2.

RESPONDENT'S EXHIBITS:

EXT.R2.A: COPY OF THE AUDITORS' REPORT DTD. 10/10/2000 ISSUED BY PAUL & ABRAHAM, CHARTERED ACCOUNTANTS, ALLEPPEY TO THE R.2.

O.P. NO. 6255/2001:

EXT.R2.B: COPY OF THE UNDERTAKING DTD. 31/03/1995 GIVEN BY THE PETITIONER.

EXT.R2.C: COPY OF THE LETTER DTD. 28/12/1999 SENT BY THE R.2. TO THE PETITIONER.

EXT.R2.D: COPY OF THE LETTER DTD. 12/04/2000 SENT BY THE R.2. TO THE PETITIONER.

EXT.R2.E: COPY OF THE LETTER DTD. 16/06/2000 SENT BY THE R.2. TO THE PETITIONER.

EXT.R2.F: COPY OF THE LETTER DTD. 29/01/2001 SENT BY THE R.2. TO THE PETITIONER.

EXT.R2.G: COPY OF THE LETTER DTD. 10/08/2000 SENT BY THE R.2. TO THE PETITIONER.

//TRUE COPY//

P.S. TO JUDGE

prv.

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.6255 of 2001-T

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Dated this the 18th day of September, 2007.

JUDGMENT

1. The two respondents are Government Companies. The petitioner was employed with the first respondent. He was deputed on 14-9-1990 to the service of the second respondent and earned a couple of promotions in that service and was repatriated to the first respondent, parent service on 4-4-1995.

2. At the time of his repatriation to his parent service, according to the petitioner, he submitted Ext.P3 before the Managing Director of the second respondent placing a statement of amounts which, according to him, are dues to him from the second respondent. At the foot of the first page of Ext.P3, there is an endorsement shown to have

been made by the Managing Director of the second respondent on 9-5-1995 to a subordinate for verification and early remittance of the statutory dues and balance due. Thereafter, different communications, including Ext.P5, were addressed between the respondents with copy to the petitioner.

3. More than four years after his repatriation to his parent department, the petitioner wrote Ext.P6 complaining to the second respondent that certain deductions, which the second respondent ought to have effected in favour of a loan transaction with the State Bank of Travancore, were not promptly made and that the Bank has issued certain notices to the petitioner. In answer to Ext.P6 dated 11-12-1999, the second respondent issued Ext.P7 on 28-12-1999 taking the stand that on reconciliation of accounts, an amount of Rs.33,348.45 is due from the petitioner to the second respondent.

4. Later on, on the instructions of the second respondent, the first respondent attempted to effect recoveries from the salaries of the petitioner. He, therefore, instituted this writ petition and at the time of admission, an interlocutory order was issued on C.M.P.10325/2001 staying recovery from the salary of the petitioner. During the pendency of this writ petition, petitioner retired from the service of the first respondent and on being moved, this Court issued an order on C.M.P.24812/2002, on 7-6-2002 directing that the amounts claimed by the second respondent will be deducted from the DCRG due to the petitioner from the first respondent and the disbursal of that amount to the second respondent will depend upon the outcome of this writ petition.

5. The contesting second respondent has placed a counter affidavit in which the receipt and action taken on Ext.P3

as shown by the production of Ext.P3 are not denied, but it is contended that the second respondent could not find the note with the statement, marked as Ext.P3 and there is no acknowledgment of receipt of such a document by any official of the section. However, they rely on Ext.R2 (a) dated 10-10-2000 which is issued by the Auditors of the second respondent stating that on reconciliation of various books of accounts, the amount as claimed by the second respondent is due. I may notice that in paragraph 10 of the counter affidavit, it is stated that the second respondent arrived at the amount claimed from the petitioner only on the basis of the verification of the Company's books of ledgers and from the Company's Internal Auditor's Report, Ext.R2(a).

6. If Ext.R2(a) was the basis of Ext.P7, it ought to be before Ext.P7. Ext.P7 reply to Ext.P6 is dated 28-12-1999, while Ext.R2(a) is dated 10-10-2000. Obviously, therefore,

Ext.R2(a) would not have been the foundation for the claim made in Ext.P7. If on the other hand, the books of accounts of the Company were themselves the basis for the claim made in Ext.P7 on 28-12-1999, from the first time, it needs to be immediately noticed that the petitioner was repatriated from the service of the second respondent to his parent department on 4-4-1995 and it would be too late in the day to accept a claim by the second respondent against the petitioner more than four years of his repatriation, that too, without any particular specific reasons being spelt out in Ext.P7. I say this because of a demand of Rs.31,873.45 being made as outstanding and unsettled miscellaneous advance without any further details.

7. The aforesaid circumstances would show that if one were to enter on a settlement of accounts between the petitioner and the second respondent, it would be too late

in the day to entertain either the claim of the petitioner or that of the second respondent. It also needs to be noticed that while being repatriated to his parent department, the petitioner was the Finance Manager of the second respondent. The management of the finance and other affairs of the second respondent by its different employees has led to the cruel reality that as on today second respondent is a wound up institution. Under such circumstances, while holding that the second respondent is not entitled to recover any amount from the petitioner on the basis of the impugned Exts.P9 and P10 on the strength of the demands made in Exts.P7 and P8, the claims of the petitioner against the second respondent for further amounts are only to be turned down.

8. In the result, the impugned recoveries against the petitioner are quashed and it is further declared that no amounts are due from the second respondent to the

petitioner and vice versa. As a result, following the interim order dated 7-6-2002 on CMP.24812/2002, there will be a further direction that the amounts retained from the DCRG shall be released by the first respondent to the petitioner within an outer limit of one month from the date of production of a copy of this judgment.

The writ petition is disposed of as above. No costs.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.6255 of 2001-T

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JUDGMENT

Dated: 18th September, 2007.